IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 543 of 2000.

Date of decision:9.10.2007.

State of H.P. .. ..Appellant

Versus

Shangru & others .. ..Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? No

For the Appellant: Mr.J.S.Guleria, Law Officer.

For the respondents:Mr.B.K.Malhotra, Advocate.

Deepak Gupta, J.(oral)

This Appeal is directed against the judgment of the Additional Chief Judicial Magistrate, Court No.1, District Mandi, H.P. in Case No.255-II of 1995 decided on 8.2.2000 whereby he has acquitted the accused of having committed the offences punishable under Sections 32 & 33 of the Indian Forest Act and Section 447 of the Indian Penal Code.

The prosecution case, in brief is that on 30.10.1993 PW-1 Forest Guard Ashok Kumar went to the jungle alongwith Anant Ram and he saw the accused persons cutting the trees at the spot. The accused persons had encroached upon the Government land and had cut 160 trees of different categories and species. The wood of the trees was lying on the spot. Damage reports Ext.PW-1/A to Ext.PW-1/F were prepared against all persons. Only accused Shangru admitted his guilt and appended his thumb impression on the damage report

whereas the other accused persons refused to sign the same. Ashok Kumar reported the matter to his higher officials. The matter was reported to the police by the Forest Range Officer Jai Singh Chandel vide complaint Ext.PW-2/A on the basis of which FIR Ext.PW-10/A was registered. The matter was investigated and the police visited the spot, prepared the site plan and took into possession the wood of the trees. After completion of investigation the police challaned the accused persons. On appearance the accused pleaded not guilty and claimed trial.

The star witnesses of the prosecution are PW-1 Ashok Kumar, PW-4 Anant Ram and PW-14 Mani Ram.

PW-1 Ashok Kumar in his statement stated that he went with another forest guard Anant Ram to Titri where they came to know that the villagers of Titri and Shayampur had encroached upon the Government land and had also cut 160 trees of different categories and species. The wood was lying on the spot which was taken into possession. The accused were questioned and thereafter the damage reports were prepared. In his cross examination this witness admits that he was transferred in May, 1993. If he had been transferred in May, 1993 how could he have come to the spot in October, 1993. According to him PW-14 Mani Ram who is the Chowkidar had identified the accused at the spot. Mani Ram was examined as PW-14. According to him he and forest guard alone went to the spot and no other person

was accompanying them. Ashok Kumar in his statement has no where stated that Mani Ram went with him to jungle. Further more PW-4 Anant Ram has come out with a totally different version. According to him he had gone to the Titri forest with Ashok Kumar on 31.10.1993 whereas Ashok Kumar states that they went to the forest on 30.10.1993. Some of the damage reports have been prepared on 31.10.1993 whereas some have been prepared on 1.11.1993. This is not also consistent with the prosecution version. The most important factor is that though in the complaint it is stated that Ashok Kumar and Anant Ram had seen the accused persons cutting the trees at the spot, in the statement in Court this fact has not been stated. There is not a whisper about who had cut these trees. No evidence whatsoever has been led to show that it was the accused persons who had cut the trees from the forest.

In view of the aforesaid discussion it is apparent that the prosecution has miserably failed to prove its case. It has not been proved that the accused persons cut the trees nor it has been shown that any wood has been recovered from the accused persons. There are glaring contradictions in the prosecution story. Hence, there is no merit in the appeal which is dismissed. Bail bonds furnished by the accused are discharged.

October 9, 2007 **(Deepak Gupta),**
PV **Judge**